

# HOUSE BILL REPORT

## SHB 2102

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### As Amended by the Senate

**Title:** An act relating to civil suits by prisoners against victims.

**Brief Description:** Requiring a prisoner to seek authorization from a court before commencing a civil action against the victim of the prisoner's crimes.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Sawyer, Muri, Kirby, Zeiger, Fey, Seaquist, Green, Morrell, Jinkins, Liias, Van De Wege, Ryu and Bergquist).

#### **Brief History:**

##### **Committee Activity:**

Judiciary: 1/16/14, 1/21/14 [DPS].

##### **Floor Activity:**

Passed House: 2/12/14, 97-0.

Senate Amended.

Passed Senate: 3/6/14, 49-0.

#### **Brief Summary of Substitute Bill**

- Requires a person convicted and confined for any serious violent offense to obtain court authorization before filing most actions in state court against the victim or victim's family.
- Provides that failure to obtain prior authorization results in loss of early release time or other privileges.

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### HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Jinkins, Chair; Hansen, Vice Chair; Rodne, Ranking Minority Member; Nealey, Assistant Ranking Minority Member; Goodman, Haler, Kirby, Klippert, Muri, Orwall, Roberts, Shea and Walkinshaw.

**Staff:** Cece Clynch (786-7195).

#### **Background:**

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

A "serious violent offense" is a subcategory of "violent offense" and means:

- Murder in the first or second degree;
- Homicide by Abuse;
- Manslaughter in the first degree;
- Assault in the first degree;
- Kidnapping in the first degree;
- Rape in the first degree;
- Assault of a child in the first degree; or
- an attempt, criminal solicitation, or criminal conspiracy to commit one of these crimes.

Sentences for such offenses range from 51 months up to life.

Inmates may shorten their sentence time, if they display good behavior, through a program called earned early release. The crime committed, date of conviction, and the offender's risk classification determine the maximum percentage of time off the sentence an offender may earn. Offenders who are convicted of certain offenses are eligible to be released to community custody in lieu of earned early release. Prison misbehavior may result in the loss of earned early release time credit. Loss of early release time and other privileges are governed by rules adopted by the Department of Corrections (DOC).

#### **Summary of Substitute Bill:**

A person convicted and confined for any serious violent offense is required to first obtain a court order of authorization, from the sentencing or presiding judge in the county of conviction, before filing most actions in state court against the victim of the offense, or the victim's family. Failure to obtain the authorization prior to commencing such an action results in loss of early release time or other privileges. The DOC is tasked with developing rules with respect to the loss of early release time or other privileges.

Prior authorization is not required for actions brought under Title 26 RCW, which includes a variety of chapters concerning domestic relations such as dissolution, child custody, child support, parentage, and adoption.

"Victim's family" is defined to include a victim's spouse, domestic partner, children, parents, and siblings.

The court may refuse to authorize a claim or action if the court finds that it is frivolous or malicious. Factors that the court may consider in making this determination include whether:

- the claim's realistic chance of ultimate success is slight;
- the claim has no arguable basis in law or in fact;
- it is clear that the party cannot prove facts in support of the claim;
- the claim has been brought with the intent to harass the opposing party; or
- the claim is substantially similar to a previous claim filed by the inmate because the claim arises from the same operative facts.

#### **EFFECT OF SENATE AMENDMENT(S):**

Authorizes the Department of Corrections to use discretion in determining whether and how the loss of early release time or other privileges may be applied, and the amount of reduction of early release time, loss of other privileges, or some combination thereof.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) Several years ago there was a murder in the Tacoma area. The man who was convicted for the murder continued to harass the victim's spouse for a long time, and even after conviction used the court system to harass her. This was after he had petitioned to be moved to Canada and she had opposed such a move. He then sued her for defamation, and also sued her friends. With this bill, before pursuing such a court action, a person convicted of a serious violent offense would have to get court permission or would be penalized. It is likely that this sort of thing wouldn't be seen in a decade, but it did happen to this victim. There is a responsibility to see that it doesn't happen again. Although it is possible to get frivolous actions dismissed, it is costly to do so. In this particular case, getting the action dismissed involved many hours of attorney time, in the neighborhood of \$15,000 worth, and it will involve more because there was an appeal filed. It is vital that the legal system tell prisoners they cannot do this. It is terrifying and traumatic for the victims. The fear that was caused to the victim's wife by the filing of this suit was tremendous, and came at a time when the victim's wife was just starting to get her life back. It caused her to go into hiding.

(In support with concerns) This story is not that uncommon. It isn't ordinary that a lawsuit is filed from prison, but frequently a domestic violence perpetrator will file actions against the spouse and friends of the spouse. It can be terrifying to have to respond to such a lawsuit. The bill strikes the right note by leaving the decision of whether to allow the suit to the courts, but putting protections in place. There are concerns that a broad exception is made for all cases under Title 26. This means a rapist could file a paternity action or a domestic violence protection order could be sought against a victim. Friends of the victim should also be protected, although this would be hard to define in statute and enforce. The mandatory loss of all early release time is too "one size fits all." Persons in prison for life without parole have nothing to lose. On the other hand, perhaps this penalty shouldn't be imposed on a prisoner who didn't know that he or she was supposed to get authorization. There should be discretion regarding the penalty.

(Opposed) None.

**Persons Testifying:** (In support) Representative Sawyer, prime sponsor; John Ladenburg; Paula Henry; and Rebecca Johnson, Washington Coalition of Sexual Assault Programs.

(In support with concerns) David Ward, Legal Voice.

**Persons Signed In To Testify But Not Testifying:** None.